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10/759,280	01/20/2004	Joanne Peart	02940086CA	6861
30743	7590	03/30/2009		
WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.			EXAMINER	
11491 SUNSET HILLS ROAD			ALSTRUM ACEVEDO, JAMES HENRY	
SUITE 340			ART UNIT	PAPER NUMBER
RESTON, VA 20190			1616	
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			03/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: JOANNE PEART, PETER R. BYRON, ARON H. LICHTMAN
AND BILLY R. MARTIN

Application No. 10/759,280
Technology Center 1616

Mailed: March 27, 2009

Before DEBORAH L. PERRY *Supervisory Paralegal Specialist, Review Team*
PERRY, *Supervisory Paralegal Specialist, Review Team.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on November 12, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

“There is a non-statutory double patenting rejection which is not addressed in this appeal.”

Examiner’s Answer

It is not clear from the record what the status is of the two double patenting rejections from the Final Rejection mailed January 25, 2008.

Specifically, the Examiner’s Answer dated September 5, 2008, does not address the double patenting rejection of:

1. Claims 43, 46, 48, 50, 52-55 and 57-60 are on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,509,005 (USPN ‘005); and
2. Claims 43, 46-48, 50, 52-55 and 57-60 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5, 13-14 and 16 of U.S. Patent No. 6,713,048 (USPN ‘048). New claims 61-63 are appended to this rejection for the reasons of record.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to vacate the Examiner’s Answer dated September 5, 2008;
- 2) on a PTOL-90 provide the disposition of the two double patent rejection from the Final Rejection dated January 25, 2008; and

3) such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DP/dw

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